

HOUSE BILL 1148
By Buck

AN ACT to amend Tennessee Code Annotated, Title 40, relative to requiring electronic recording of all custodial interrogations of defendants in criminal cases.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 40, Chapter 14, Part 1, is amended by adding the following as a new, appropriately designated section:

Section 40-14-110.

(a) As used in this section:

(1) "Written statement of an accused" means a statement signed by the accused or a statement made by the accused in such person's own handwriting or, if the accused is unable to write, a statement bearing such person's mark, when the mark has been witnessed by a person other than a peace officer;

(2) "Custodial interrogation" means any interrogation during which the person being interrogated is not free to leave and a question is asked that is designed to elicit an incriminating response; and

(3) "Place of detention" means a facility under the control of a law enforcement agency.

(b) An oral, written, or sign language statement of an accused made as a result of a custodial interrogation at a police station or other place of detention shall be presumed to be inadmissible as evidence against the accused in any criminal proceeding brought under the laws of the state of Tennessee, unless:

(1) An electronic video and audio recording is made of the custodial interrogation;

(2) Prior to the custodial interrogation, but during the recording, the accused is given the following warnings:

(A) That the accused has the right to remain silent and not make any statement at all, and that any statement the accused makes may be used against the accused at trial;

(B) That any statement the accused makes may be used as evidence against the accused in court;

(C) That the accused has the right to have an attorney present to advise such accused prior to and during any questioning; and

(D) That if the accused is unable to employ an attorney, such accused has the right to have an attorney appointed to advise the accused prior to and during any questioning;

(3) Prior to the statement but during the recording, the accused waives the rights described in subdivision (2);

(4) The recording is accurate and has not been altered;

(5) All voices on the recording are identifiable; and

(6) Upon oral or written motion, the attorney representing the accused shall be provided with a true, complete and accurate copy of the recordings required under this statute, prior to any proceeding at which the statement is to be offered as evidence against the defendant.

(c) In addition to the requirements of subsection (b), a written statement made by an accused as a result of a custodial interrogation at a police station or other place of detention is presumed to be inadmissible as evidence against such accused in any criminal proceeding unless it is shown on the face of the statement that:

(1) The accused, prior to making the statement, received from the person to whom the statement is made a warning that:

(A) Such accused has the right to remain silent and not make any statement at all and that any statement the accused makes may be used against the accused at trial;

(B) Any statement such accused makes may be used as evidence against the accused in court;

(C) Such accused has the right to have an attorney present to advise the accused prior to and during any questioning; and

(D) If such accused is unable to employ an attorney, such accused has the right to have an attorney appointed to advise the accused prior to and during any questioning; and

(2) The accused, prior to and during the making of the statement, waived the rights set out in the warning prescribed by subdivision (c)(1).

(d) Every electronic video and audio recording of any statement made by an accused during a custodial interrogation at a police station or other place of detention must be preserved until such time as the defendant's conviction for any offense relating to the statement is final and all direct and habeas corpus appeals are exhausted, or the prosecution of such offenses is barred by law.

(e) If the accused is a deaf person, the accused's statements under subsection (b) of this section are presumed to be inadmissible against the accused unless the warnings in subsection (b) are interpreted to the deaf person by an interpreter who is qualified and certified under the laws of the state of Tennessee and the Rules of the Supreme Court of Tennessee.

(f) If a defendant can prove, by a preponderance of the evidence, that such defendant was subjected to a custodial interrogation at a police station or other place of detention, prior to the custodial interrogation at a police station or other place of detention which, after the effective date of this section, was the subject of the electronic video and audio recording, and if that prior custodial interrogation at a police station or other place of detention relating to the same offense was not recorded as required by

this section, then any statements made by the defendant during or following that non-recorded custodial interrogation at a police station or other place of detention, even if otherwise in compliance with this section, are presumed to be inadmissible in any criminal proceeding against the defendant except for the purposes of impeachment.

(g) Nothing in this section precludes the admission of:

(1) A statement made by the accused in open court at such accused's trial, before a grand jury, or at a preliminary hearing;

(2) A statement that is *res gestae* of the arrest or of the offense;

(3) A statement made during a custodial interrogation that was not recorded as required by this section, because video or audio recording, or both, was not feasible;

(4) A voluntary statement, whether or not the result of a custodial interrogation, that has a bearing on the credibility of the accused as a witness;

(5) A statement made under exigent circumstances;

(6) A spontaneous statement that is not made in response to a question;

(7) A statement made after questioning that is routinely asked during the processing of the arrest of the suspect;

(8) A statement made during a custodial interrogation by a suspect who agrees, prior to making the statement, to respond to the interrogator's questions only if either a video or an audio recording, or both, is not made of the statement, provided that an electronic video and audio recording is made of the statement of agreeing to respond to the interrogator's question, only if a recording is not made of the statement;

(9) A statement made during a custodial interrogation that is conducted out-of-state;

(10) A statement made by a suspect who is being interrogated simultaneously with other suspects concerning the same offense, but only to the extent that no electronic recording equipment (video or audio) is available

because it is being utilized for the interrogations of the other suspects for the same offense; or

(11) Any other statement that may be admissible under law.

The state shall bear the burden of proving, by a preponderance of the evidence, that one of the exceptions described in this subsection is applicable.

(h) Nothing in this section precludes the admission of a statement, otherwise inadmissible under this section, that is used only for impeachment and not as substantive evidence.

SECTION 2. This act shall take effect July 1, 2005, the public welfare requiring it.